

109TH CONGRESS
1ST SESSION

H. R. 3401

To amend title 32, United States Code, to improve the readiness of State defense forces and to increase military coordination for homeland security between the States and the Department of Defense.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2005

Mr. WILSON of South Carolina (for himself, Mr. DAVIS of Tennessee, Mr. NORWOOD, Mr. WESTMORELAND, Mr. RADANOVICH, Mr. McCOTTER, Mr. SCOTT of Georgia, Mr. MILLER of Florida, Mr. SPRATT, Mr. BURTON of Indiana, and Mr. FORTUÑO) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 32, United States Code, to improve the readiness of State defense forces and to increase military coordination for homeland security between the States and the Department of Defense.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Defense Force
5 Improvement Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Domestic threats to national security and
2 the increased use of National Guard forces for out-
3 of-State deployments greatly increase the potential
4 for service by members of State defense forces estab-
5 lished under section 109(c) of title 32, United States
6 Code.

7 (2) The efficacy of State defense forces is im-
8 peded by lack of clarity in the Federal regulations
9 concerning those forces, particularly in defining lev-
10 els of coordination and cooperation between those
11 forces and the Departments of Defense and Home-
12 land Security.

13 (3) The State defense forces suffer from lack of
14 standardized military training, arms, equipment,
15 support, and coordination with the Departments of
16 Defense and Homeland Security and other Federal
17 agencies as a result of real and perceived Federal
18 regulatory impediments.

19 **SEC. 3. RECOGNITION OF STATE DEFENSE FORCES.**

20 (a) IN GENERAL.—Section 109 of title 32, United
21 States Code, is amended—

22 (1) by redesignating subsections (d) and (e) as
23 subsections (l) and (m), respectively;

24 (2) by inserting after subsection (c) the fol-
25 lowing new subsections:

1 “(d) RECOGNITION.—Congress hereby recognizes
2 forces established under subsection (c) as an integral mili-
3 tary component of the Nation’s homeland security effort,
4 while reaffirming that those forces remain entirely State
5 regulated, organized, and equipped and recognizing that
6 those forces will be used for homeland security purposes
7 exclusively at the local level and in accordance with State
8 law.

9 “(e) ASSISTANCE BY DEPARTMENT OF DEFENSE.—
10 (1) The Secretary of Defense is authorized to coordinate
11 homeland security efforts with, and to provide assistance
12 to, a defense force established under subsection (c) to the
13 extent such assistance is requested by a State or by a force
14 established under subsection (c) and subject to the provi-
15 sions of this section.

16 “(2) The Secretary may not provide assistance under
17 paragraph (1) if, in the judgment of the Secretary, such
18 assistance would—

19 “(A) impede the ability of the Department of
20 Defense to execute missions of the Department;

21 “(B) take resources away from warfighting
22 units;

23 “(C) incur nonreimbursed identifiable costs; or

1 “(D) consume resources in a manner incon-
2 sistent with the mission of the Department of De-
3 fense.

4 “(f) ASSISTANCE BY DEPARTMENT OF HOMELAND
5 SECURITY.—The Secretary of Homeland Security is au-
6 thorized to coordinate homeland security efforts with, and
7 to provide assistance to, a defense force established under
8 subsection (c) to the extent such assistance is requested
9 by a State or by a force established under subsection (c)
10 if so authorized by State law, and subject to the provisions
11 of this section.

12 “(g) USE OF DEPARTMENT OF DEFENSE PROPERTY
13 AND EQUIPMENT.—The Secretary of Defense may author-
14 ize qualified personnel of a force established under sub-
15 section (c) to use and operate property, arms, equipment,
16 and facilities of the Department of Defense as needed in
17 the course of training activities and State active duty

18 “(h) TRANSFER OF EXCESS EQUIPMENT.—(1) The
19 Secretary of Defense may transfer to a State or a force
20 established under subsection (c) any personal property of
21 the Department of Defense that the Secretary determines
22 is—

23 “(A) excess to the needs of the Department of
24 Defense; and

1 “(B) suitable for use by a force established
2 under subsection (c).

3 “(2) The Secretary of Defense may transfer personal
4 property under this section only if—

5 “(A) the property is drawn from existing stocks
6 of the Department of Defense;

7 “(B) the recipient force established under sub-
8 section (c) accepts the property on an as-is, where-
9 is basis;

10 “(C) the transfer is made without the expendi-
11 ture of any funds available to the Department of
12 Defense for the procurement of defense equipment;
13 and

14 “(D) all costs incurred subsequent to the trans-
15 fer of the property are borne or reimbursed by the
16 recipient.

17 “(3) Subject to paragraph (2)(D), the Secretary may
18 transfer personal property under this section without
19 charge to the recipient force established under subsection
20 (c).

21 “(i) FEDERAL/STATE TRAINING COORDINATION.—

22 (1) Participation by a force established under subsection
23 (c) in a training program of the Department of Defense
24 or Department of Homeland Security is at the discretion
25 of the State.

1 “(2) Nothing in this section may be construed as re-
2 quiring the Department of Defense or Department of
3 Homeland Security to provide any training program to
4 any such force.

5 “(3) Any such training program shall be conducted
6 in accordance with an agreement between—

7 “(A) the Secretary of Defense or Secretary of
8 Homeland Security, as the case may be; and

9 “(B) the State or the force established under
10 subsection (c) if so authorized by State law.

11 “(4) Any direct costs to the Department of Defense
12 of providing training assistance to a force established
13 under subsection (c) shall be reimbursed by the State. Any
14 agreement under paragraph (3) between the Department
15 of Defense and a State or a force established under sub-
16 section (c) for such training assistance shall provide for
17 payment of such costs.

18 “(j) FEDERAL FUNDING OF STATE DEFENSE
19 FORCES.—Funds available to the Department of Defense
20 may not be made available to a State defense force.

21 “(k) LIABILITY.—Any liability for injuries or dam-
22 ages incurred by a member of a force established under
23 subsection (c) while engaged in training activities or State
24 active duty shall be the sole responsibility of the State,
25 regardless of whether the injury or damage was incurred

1 on United States property or involved United States
 2 equipment or whether the member was under direct super-
 3 vision of United States personnel at the time of the inci-
 4 dent.”; and

5 (3) by adding at the end the following new sub-
 6 section:

7 “(n) DEFINITION.—In this section, the term ‘State’
 8 includes the District of Columbia, the Commonwealth of
 9 Puerto Rico, Guam, and the Virgin Islands.”.

10 (b) CONFORMING AMENDMENTS.—Such section is
 11 further amended in subsections (a), (b), and (c) by strik-
 12 ing “or Territory,” and all that follows through “of Co-
 13 lumbia”.

14 (c) CLERICAL AMENDMENTS.—

15 (1) SECTION HEADING.—The heading of such
 16 section is amended to read as follows:

17 **“§ 109. Maintenance of other troops: State defense**
 18 **forces”.**

19 (2) CLERICAL AMENDMENT.—The item relating
 20 to such section in the table of sections at the begin-
 21 ning of chapter 1 of such title is amended to read
 22 as follows:

“109. Maintenance of other troops: State defense forces.”.

